



Claimant did not report the incident to the respondent when it happened. However, claimant contends she first reported the incident to respondent in November 1993 when she was advised she was being laid off.

Claimant testified she continued to work after the July incident through November 1993. During that period, claimant contends her symptoms worsened. However, she also contends she did not report the incident to the respondent because she thought her symptoms would resolve. Claimant testified that within two days of the accident she was unable to stand on her injured heel and began leaning forward to perform her various job duties.

Claimant first sought medical treatment for her injuries when she saw Jim D. Blunk, D.O., on December 13, 1993. Dr. Blunk referred claimant for x-rays of the left foot. On the x-ray report dated December 13, 1993, the clinical diagnosis is shown as "hurt foot in July, pain in heel and mid arch." The x-ray did not indicate bone or joint pathology.

Claimant testified she began having back problems shortly after she hurt her foot. Starting at page 35 of the preliminary hearing transcript, she testified as follows:

- "Q. As I understand it the initial injury was to your heel, your left heel; is that right?"  
"A. Yes."  
"Q. And you are claiming at some point because of the heel injury you had back problems?"  
"A. It was already related to my back, yes."  
"Q. When did the problem start with your back?"  
"A. When I was still employed. When I couldn't hold my back up. Two days later I couldn't hold my back up. As I said, I removed the rug pad because I couldn't stand on it."  
"Q. So you had a heel injury and you couldn't lift your back up?"  
"A. I leaned forward. And I couldn't hold my back up."  
"Q. Did you --"  
"A. Because of the leaning forward."

Based upon the evidence presented to date, the Appeals Board finds that claimant did not give timely notice of the July 2, 1993 accident. Claimant acknowledges that she did not give respondent notice of the incident involving her foot until November 1993, which is outside both the 10-day and 75-day parameters set forth by K.S.A. 44-520. Although claimant continued to have pain in her heel after July 1993, there is no medical evidence or opinion that addresses the question of ongoing injury occurring after July 1993. To the contrary, the medical records introduced at the preliminary hearing indicate the date of the heel injury to be July 2, 1993 only.

The Appeals Board also finds that claimant failed to provide timely notice of accident for the alleged injury to her back and legs. Claimant contends her work from July 1993 through November 1993 aggravated her back and legs. However, she also admits the first time she advised respondent of symptoms or problems regarding her back and legs was in July 1994, which is also beyond the time limits for notice contained in K.S.A. 44-520 even using her last day of work for respondent as her date of accident.

Based upon the evidence presented to date, claimant's request for benefits should be denied for lack of timely notice.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes dated April 3, 1996 should be, and hereby is, reversed and set aside.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1996.

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BOARD MEMBER

C:

David Farris, Wichita, KS  
Eric K. Kuhn, Wichita, KS  
Edward D. Heath, Jr., Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director